

1 Neville L. Johnson (SBN 66329)  
2 Douglas L. Johnson (SBN 209216)  
3 Alyson C. Decker (SBN 252384)  
4 JOHNSON & JOHNSON LLP  
5 439 North Canon Drive, Suite 200  
6 Beverly Hills, California 90210  
7 Telephone: (310) 975-1080  
8 Facsimile: (310) 975-1095  
9 Email: njohnson@jjllplaw.com  
10 djohnson@jjllplaw.com  
11 adecker@jjllplaw.com

12 Attorneys for Defendants

13 UNITED STATES DISTRICT COURT  
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 RED EAGLE ENTERTAINMENT, LLC,  
16 a California limited liability company; and  
17 MANETHEREN, LLC, a California  
18 limited liability company;

19 Plaintiffs,

20 vs.

21 BANDERSNATCH GROUP, INC., a  
22 South Carolina corporation; HARRIET P.  
23 MCDUGAL, an individual; and DOES  
24 1 through 20, inclusive,

25 Defendants.

Case No.: 2:15-cv-1038

Assigned for all Purposes to:  
Hon. Stephen V. Wilson

**DEFENDANTS'  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
DISMISS THE SECOND,  
THIRD, AND FOURTH CAUSES  
OF ACTION CONTAINED IN  
PLAINTIFFS' COMPLAINT  
PURSUANT TO FED. R. CIV. P.  
12(b)(6)**

Complaint Filed: Feb. 12, 2015

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Courtroom 6

[Filed concurrently herewith  
Defendants' Notice of Motion,  
Defendants' Request for Judicial  
Notice, and [Proposed] Order]

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiffs Red Eagle Entertainment, LLC (“Plaintiff Red Eagle”) and Manetheren, LLC (“Plaintiff Manetheren”) rushed to release a television “pilot” at the very last minute in an effort to preserve an option on *The Wheel of Time* book series that they had failed to act on for more than ten years. Then, they rushed to file a Complaint against Defendants Bandersnatch Group, Inc. (“Bandersnatch”) and Harriet P. McDougal so that they could pick the jurisdiction they wanted to be in when the inevitable litigation over who actually owns the motion picture and television rights to *The Wheel of Time* book series began. The result is a slipshod pleading composed of entirely conclusory allegations that are not supported by material facts. Furthermore, Plaintiffs, in their mad dash to the courthouse steps, have failed to plead all of the required elements of several of their causes of action. Because Plaintiffs have not sufficiently pled their claims, the Court should grant Defendants’ Motion to Dismiss Plaintiffs’ second, third, and fourth causes of action without leave to amend.

### **II. BRIEF STATEMENT OF FACTS**

Over a decade ago, the author of *The Wheel of Time* book series entered into a one-year option agreement for the motion picture, television, and allied rights to the first book in the series with Plaintiff Manetheren’s predecessor in interest. *See* Complaint at ¶ 13. After multiple extensions and amendments, including the replacement of the author by Bandersnatch as a successor in interest and the inclusion of all of the books from the series into the agreement, Plaintiff Manetheren’s option was finally expected to expire on February 11, 2015. *See id.* at ¶¶ 14-15. After ten plus years without the release of a motion picture or a television pilot, all of the rights were set to revert back to Bandersnatch. *See id.* at ¶¶ 14-15.

Plaintiffs, however, not wanting to give up their option to capitalize on *The*

1 *Wheel of Time* book series and reap the benefits of controlling the next *Lord of the*  
 2 *Rings* or *Game of Thrones* saga, threw together a last-minute television “pilot.” *See*  
 3 *id.* at ¶ 24. This “pilot” aired once on the FXX cable network late at night/early in  
 4 the morning on February 8-9, 2015. *See id.* In response to this airing of the “pilot,”  
 5 Harriet P. McDougal, the widow of the author, issued a statement online  
 6 commenting that “she was ‘dumbfounded’ by the release of the Pilot.” *Id.* at ¶ 26.

7 Despite being unable to point to a single contract that has been interfered  
 8 with or any specific monetary damages that have been suffered, Plaintiffs filed this  
 9 action against Harriet P. McDougal and Bandersnatch just a mere three days after  
 10 the alleged “disparaging” statement had been made. In their Complaint, Plaintiffs  
 11 claim, amongst other things, that Defendants have slandered their title to the motion  
 12 picture and television rights to *The Wheel of Time* book series, that Defendants have  
 13 intentionally interfered with Plaintiff Manetheren’s contractual relations, and that  
 14 Defendants have also intentionally interfered with Plaintiffs’ prospective economic  
 15 relations. *See id.* at ¶¶ 31-32 and 38-59. All of this allegedly occurred in less than  
 16 a week and based entirely on one single statement of dumbfoundment.

### 17 **III. ARGUMENT**

18 In order to survive a motion to dismiss, “a complaint must contain sufficient  
 19 factual matter to state a facially plausible claim to relief.” *Shroyer v. New Cingular*  
 20 *Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010). Thus, dismissal is  
 21 appropriate when there is “an absence of sufficient facts alleged to support a  
 22 cognizable legal theory.” *Id.* (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th  
 23 Cir. 2001)). Dismissal is also warranted “where the plaintiff fails to state a claim  
 24 upon which relief may be granted.” *Metro-Goldwyn-Mayer Studios Inc. v.*  
 25 *Grokster, Ltd.*, 269 F. Supp. 2d 1213, 1218 (C.D. Cal. 2003).

26 When considering a motion to dismiss, the Court “is not required ‘to accept  
 27 as true allegations that are merely conclusory, unwarranted deductions of fact, or  
 28 unreasonable inferences.’” *Flores v. EMC Mortgage Co.*, 997 F. Supp. 2d 1088,

1 1100 (E.D. Cal. 2014) (quoting *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055  
 2 (9th Cir. 2008)). Failure “to plead sufficiently all required elements of a cause of  
 3 action” is fatal to any claim, even when the Complaint is construed in the light  
 4 most favorable to Plaintiffs. *Id.* at 1101 (quoting *Student Loan Mktg. Ass’n v.*  
 5 *Hanes*, 181 F.R.D. 629, 634 (S.D. Cal. 1998)). Thus, conclusory allegations and “a  
 6 formulaic recitation of the elements of a cause of action will not do.” *Bell Atl.*  
 7 *Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007) (requiring further factual  
 8 enhancements beyond merely naked assertions); *see also Ashcroft v. Iqbal*, 556  
 9 U.S. 622, 678 (2009) (stating that the pleading requirements of Federal Court  
 10 “demand[ ] more than an unadorned, the-defendant-unlawfully-harmed-me  
 11 accusation”); *Somers v. Apple, Inc.*, 729 F.3d 953, 959-60 (9th Cir. 2013); *In re*  
 12 *Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1107 (9th Cir. 2013)  
 13 (commenting that “pure notice pleading” is no longer sufficient in Federal Court).

14 Furthermore, “[d]ismissal without leave to amend is proper if it is clear that  
 15 the complaint could not be saved by amendment.” *Somers*, 729 F.3d at 960  
 16 (quoting *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051 (9th Cir. 2008)); *see*  
 17 *also N.L.R.B. v. Vista Del Sol Health Servs., Inc.*, --- F. Supp. 2d ---, 2014 WL  
 18 4243326 at \*11 (C.D. Cal. July 7, 2014) (finding that dismissal with prejudice is  
 19 appropriate where amendment would be futile); *Flores*, 997 F. Supp. 2d at 1100.

20 **A. Plaintiffs Have Not Adequately Pled all of the Essential Elements for**  
 21 **a Claim of Slander of Title**

22 To be able to move forward with their claim for slander of title, Plaintiffs  
 23 must allege: “(1) a publication, (2) without privilege or justification, (3) falsity, and  
 24 (4) direct pecuniary loss.” *Sumner Hill Homeowners’ Ass’n, Inc. v. Rio Mesa*  
 25 *Holdings, LLC*, 205 Cal. App. 4th 999, 1030 (2012). Plaintiffs have failed to  
 26 adequately plead two of these key elements. First, the statement made by  
 27 Defendants speaks solely to Defendants’ own and a third-party’s interests in the

28 ///

1 rights to develop a television series based on *The Wheel of Time* book series.<sup>1</sup> See  
 2 Defendants' Request for Judicial Notice at Exhibit A. As such, and considering  
 3 that these are the very disputed rights raised in this case in Plaintiffs' fifth cause of  
 4 action for declaratory relief, this statement of an interest in or ownership of the  
 5 property at question amounts to a qualified privilege. See *M.F. Farming, Co. v.*  
 6 *Couch Distrib. Co.*, 207 Cal. App. 4th 180, 198 (2012); *Davis v. Wood*, 61 Cal.  
 7 App. 2d 788, 794 (1943); *Thompson v. White*, 70 Cal. 135, 135-36 (1886). Because  
 8 these statements of self-ownership are privileged, Plaintiffs have failed to  
 9 adequately plead the second element of a claim for slander of title, which requires  
 10 them to allege that the published statement was without privilege. See *Sumner Hill*

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 12 <sup>1</sup> The Court may take judicial notice of "matters of public record." *U.S. v.*  
 13 *Corinthian Colls.*, 655 F.3d 984, 999 (2011). This includes verified publications  
 14 made on social media websites such as Google+. See, e.g., *Perkins v. LinkedIn*  
 15 *Corp.*, --- F. Supp. 2d ---, 2014 WL 2751053 at \*7-8 (N.D. Cal. June 12, 2014),  
 16 *Signature Mgmt. Team, LLC v. Automatic, Inc.*, 941 F. Supp. 2d 1145, 1147-48  
 17 (N.D. Cal. 2013). Here Defendants ask that the Court take judicial notice of what  
 18 was published to the public on February 9, 2015 on Robert Jordan's *The Wheel of*  
 19 *Time* Google+ page. The issue of whether or not the statement was false or true is  
 20 not currently before the Court, just the mere question of what was published, which  
 21 is part of the public record. Alternatively, the Court may consider "unattached  
 22 evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to  
 23 the document; (2) the document is central to the plaintiff's claim; and (3) no party  
 24 questions the authenticity of the document." *Corinthian Colls.*, 655 F.3d at 999.  
 25 "The court may 'treat such a document as 'part of the complaint, and thus may  
 26 assume its contents are true for purposes of a motion to dismiss under Rule  
 27 12(b)(6).'" *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)  
 28 (quoting *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)). The February 9,  
 2015 publication on Robert Jordan's *The Wheel of Time* Google+ page is  
 referenced throughout the Complaint, is central to nearly all of the claims raised in  
 this case, and forms the basis of Plaintiffs' second, third, and fourth causes of  
 action. See, e.g., Complaint at ¶¶ 25-26, 29-31, 36, 39-40, 49, and 56. Nor can  
 there be any legitimate dispute that this was not the statement originally published  
 by Defendants as a copy of the statement was provided by counsel for Plaintiffs to  
 Defendants in a February 10, 2015 letter. See Defendants' Request for Judicial  
 Notice at Exhibit B.

1 *Homeowners' Ass'n, Inc.*, 205 Cal. App. 4th at 1030.

2 Second, pecuniary loss "is an essential element of a slander of title cause of  
 3 action." *Id.* Plaintiffs have failed to plead any specific pecuniary loss that they  
 4 have suffered from the alleged misconduct of Defendants. Instead Plaintiffs make  
 5 only conclusory statements that they "have been harmed in an amount to be proven  
 6 at trial." *See* Complaint at ¶ 44. Nor is there a single allegation as to the amount of  
 7 any claimed loss or as to any pecuniary reduction in any of the rights Plaintiffs may  
 8 or may not have in the development of a television series based on *The Wheel of*  
 9 *Time* book series. Instead, Plaintiffs talk obliquely of "harm [to Plaintiff]  
 10 Manetheren's ability to enter into new contractual relationships," (without  
 11 identifying a single contractual relationship that was affected), and a "loss of public  
 12 goodwill." *See id.* at 31-32. Neither of these amounts to a sufficient allegation of a  
 13 **pecuniary** injury. Not to mention that the Complaint appears to be completely  
 14 devoid of even a single mention of any "monetary" injuries actually suffered by  
 15 Plaintiff Red Eagle. Such conclusory and unsupported statements of injury do not  
 16 satisfy Plaintiffs' pleading burden. *See, e.g., Iqbal*, 556 U.S. at 678 (stating that the  
 17 pleading requirements of Federal Court "demand[ ] more than an unadorned, the-  
 18 defendant-unlawfully-harmed-me accusation"); *Shroyer*, 622 F.3d at 1041; *In re*  
 19 *Gilead Scis. Sec. Litig.*, 536 F.3d at 1055.

20 Because Plaintiffs have failed to adequately plead two of the four elements  
 21 for slander of title, this claim should be dismissed. Furthermore, no leave to amend  
 22 should be granted as Plaintiffs cannot "cure" or plead around the qualified privilege  
 23 that Defendants have to assert their interest in a property whose ownership is  
 24 contested.

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**B. Plaintiff's Allegations as to Intentional Interference with Contractual Relations Are Conclusory and Insufficient**

To begin with, Plaintiff Manetheren is not alleging that any contracts have actually been breached because of any statements made by Defendants. *See* Complaint at ¶ 49. Instead it alleges that either it has been prevented from performing under the contracts in question or that its performance has been made more expensive or difficult. *See id.* This “interference” with performance is a required element for a claim of intentional interference with contractual relations where no breach has been induced. *See, e.g., Ramona Manor Convalescent Hosp. v. Care Enters.*, 177 Cal. App. 3d 1120, 1131 (1986); *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014); *Moore v. Apple, Inc.*, --- F. Supp. 3d ---, 2014 WL 5830374 at \*7 (N.D. Cal. Nov. 10, 2014). Therefore, this element must be sufficiently pled and supported with material facts to survive a motion to dismiss in Federal Court. *See, e.g., Twombly*, 550 U.S. at 555, 557; *Shroyer*, 622 F.3d at 1041; *Flores*, 997 F. Supp. 2d at 1100.

The Complaint, however, makes nothing more than a couple of overly general and conclusory statements as to any interference or effect on Plaintiff Manetheren's performance of these undescribed contracts with various affiliates and third-parties. *See* Complaint at ¶¶ 19, 31, and 49. There is not a single fact explaining how any performance was prevented. There is not a single detail as to how any performance was made more expensive. And, there is not a single sentence describing how any performance was made more difficult. Such bare boned allegations are completely insufficient to satisfy the pleadings requirements and necessitate that this third cause of action be dismissed.

In addition, at least one of the contracts that Plaintiff Manetheren alleges Defendants interfered with was between Plaintiff Manetheren and an affiliated entity. *See* Complaint at ¶¶ 19 (“Manetheren also entered into a series of agreements with affiliates and independent third parties...”), 31, 47, and 49.

1 However, California law clearly requires that for the existence of any claim of  
 2 intentional interference with contractual relations, there must be “a valid contract  
 3 between plaintiff and a **third party**.” *Winchester Mystery House, LLC v. Global*  
 4 *Asylum, Inc.*, 210 Cal. App. 4th 579, 596 (2012) (emphasis added); *see also Fresno*  
 5 *Motors, LLC*, 771 F.3d at 1125. Because an affiliate is an entity which is either  
 6 “controlled,” at least in part, by the company that it is an affiliate of, (or both  
 7 companies are controlled by the same “parent” company), then, logically, an  
 8 affiliate cannot be an independent third party. *See also* Complaint at ¶ 19 (drawing  
 9 a distinction between “affiliates” and “independent third parties”).

10 Thus, it follows that Plaintiff Manetheren cannot state a claim for intentional  
 11 interference with contractual relations when the contract allegedly being interfered  
 12 with is not a contract between Plaintiff Manetheren and an independent third party,  
 13 but rather between Plaintiff Manetheren and its affiliate. Not to mention that even  
 14 if an affiliate of Plaintiff Manetheren is considered a “third party,” the affiliate  
 15 would surely be aware, in the same way that Plaintiff Manetheren claims to be, as  
 16 to the falsity or veracity of any statements made by Defendants and would not, if  
 17 any such statement was false, make performance harder or more expensive for  
 18 Plaintiff Manetheren or let such a “false” statement interfere with any contract that  
 19 affiliate might have with the Plaintiff. For this reason, this fourth cause of action  
 20 also fails as to any alleged interference with a contract that is solely with an affiliate  
 21 of Plaintiff Manetheren and should be dismissed.

22 **C. Plaintiffs Have Failed to Plead all of the Required Elements of a**  
 23 **Claim for Intentional Interference with Prospective Economic**  
 24 **Relations**

25 Unlike intentional interference with contractual relations, intentional  
 26 interference with prospective economic relations requires that Plaintiffs plead that  
 27 the “interference was wrongful ‘by some measure beyond the fact of the  
 28 interference itself.’ [citation omitted]” *Della Penna v. Toyota Motor Sales, U.S.A.*,

1 *Inc.*, 11 Cal. 4th 376, 392-93 (1995); *see also Fresno Motors, LLC v. Mercedes*  
 2 *Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014); *Curtis v. Shinsachi Pharm.*  
 3 *Inc.*, --- F. Supp. 3d ---, 2014 WL 4425822 at \*8 (C.D. Cal. Sept. 9, 2014); *Crown*  
 4 *Imps., LLC v. Super. Ct.*, 223 Cal. App. 4th 1395, 1404-1405 (2014); *Edwards v.*  
 5 *Arthur Andersen LLP*, 44 Cal. 4th 937, 944 (2008). “[A]n act is independently  
 6 wrongful if it is unlawful.” *Edwards*, 44 Cal. 4th at 944 (quoting *Korea Supply*  
 7 *Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153-54 (2003)). This  
 8 unlawfulness must be “for reasons other than it interfered with a prospective  
 9 economic advantage.” *Crown Imps., LLC*, 223 Cal. App. 4th at 1404 (internal  
 10 citations omitted); *see also Fresno Motors, LLC*, 771 F.3d at 1125 (noting that the  
 11 conduct must be “‘wrongful by some legal measure other than the fact of the  
 12 interference itself.’ [citation omitted]”).

13 Despite this well-established legal rule, there is not a single allegation within  
 14 Plaintiffs’ fourth cause of action of any wrongful conduct other than the claimed  
 15 interference itself. *See* Complaint at ¶¶ 54-59. As Plaintiffs have not even bothered  
 16 to plead one of the essential elements of this claim, the Court must dismiss this  
 17 fourth cause of action because failure “to plead sufficiently all required elements  
 18 of a cause of action” is fatal.<sup>2</sup> *Flores*, 997 F. Supp. 2d at 1101 (quoting *Hanes*,  
 19 181 F.R.D. at 634); *see also Metro-Goldwyn-Mayer Studios Inc.*, 269 F. Supp. 2d at  
 20 1218.

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 28 <sup>2</sup> Also, for the reasons stated in Sections III. A-B, there is no independently  
 wrongful conduct.

1 **IV. CONCLUSION**

2 Because Plaintiffs have failed to sufficiently plead all of the required  
3 elements of several of their causes of action, and have failed to support all of their  
4 claims with properly alleged material facts, Defendants respectfully request that the  
5 Court grant their Motion to Dismiss Plaintiffs' Second, Third, and Fourth causes of  
6 action.

7  
8 DATED: March 19, 2015

**JOHNSON & JOHNSON LLP**

9  
10 By /s/ Neville L. Johnson

11 Neville L. Johnson  
12 Douglas L. Johnson  
13 Alyson C. Decker  
14 Attorneys for Defendants  
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